

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Baxter International Inc.,

Opposer,

v.

Inviro Medical Devices, Ltd.

Applicant.

)
)
)
)
) Opposition No.: 91150298
) Application No. 76/151,380
)
)
)



09-12-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #70

**OPPOSER'S MOTION TO
EXTENSION OF DISCOVERY CUT OFF**

TRADEMARK TRIAL AND
APPEAL BOARD
02 SEP 20 AM 12:58

In accordance with 37 C.F.R. § 2.127, and T.B.M.P. § 509, Opposer, Baxter International, Inc., moves this Board to grant an extension to the current discovery cut-

1. The current discovery deadline is set for September 30, 2002. Opposer and Applicant filed a consented motion to extend discovery from June 30, 2002 to September 30, 2002, on May 22, 2002 after both parties had granted the other two 30-day extensions of time in which to present answers to the discovery served. The Board granted that motion on June 5, 2002.

2. Opposer served its initial discovery requests on Applicant on March 15, 2002, and granted, in total, three requests for 30-day extensions of time for which Applicant would answer. On July 21, 2002, Opposer received Applicant's answers to the discovery interrogatories and production requests, though Opposer found the responses to be incomplete. Though Opposer's counsel wrote to Applicant's counsel on July 25, 2002, and requested supplementation to those answers, Opposer received no response,

and Opposer's counsel re-sent its request on August 7, 2002. On August 22, 2002, counsel for both parties had a telephone conference during which time Opposer requested further documents and supplementation to the initial interrogatory answers. Applicant's counsel suggested that full and complete information had been given, but that he would ask his client to provide anything else that might be responsive. To this date, no further materials or answers have been provided to Opposer's counsel.

3. Opposer has requested potentially confidential documents from Applicant during the course of discovery, and on August 5, 2002, in conjunction with Opposer's own written responses to Applicant's discovery, sent opposing counsel, via Federal Express, a draft protective order for review and signature in order that the parties could then move forward with exchanging proprietary information. Though counsel for Applicant has advised Opposer's counsel that his client has reviewed the document and intended to provide a revised order for review and signature, as of today's date, Opposer's counsel has never received any written comments or proposed changes to Opposer's suggested protective order, or any revised order for review. Hence, as of today's date, the parties have not exchanged any confidential documents.

4. Finally, both Opposer and Applicant are interested in taking depositions in furtherance of the case. Opposer has approached Applicant regarding its intention to depose Applicant's employee(s) and the parties have discussed dates which would work. Opposer has requested taking the deposition orally, though Applicant's employee is in Canada. It is believed that Applicant has consented to the taking of the deposition orally, but it appears that counsel for Opposer is unavailable to take the deposition during the one week that Applicant's employee is free during the month of September.

Furthermore, Opposer would like the benefit of reviewing any confidential documents produced to it before taking the aforementioned deposition(s), though as explained above, no confidential documents have been exchanged because no protective order has been agreed upon. Applicant's counsel suggested his intention to depose each person identified in Baxter's responses—seventeen people.

5. Further, Opposer may wish to conduct a survey in relation to this Opposition. However, given the cost involved in such an endeavor, Opposer delayed initiating the survey process until review of Applicant's documents and answers. Opposer would like to delay the taking of any survey until it has had a chance to review Applicant's documents and depose Applicant's employee(s) and therefore, it does not appear that a survey could be seriously considered, or initiated for several weeks.

6. Finally, this Board should note that Opposer filed a consented motion to amend its Notice of Opposition on August 23, 2002. It is presumed therefore, that the Board will automatically set a new deadline for Applicant to file a written response to that Opposition and reset the discovery deadlines based on the new response date. However, in the event that Applicant objects to any resetting of the discovery deadlines which the TTAB may do as a matter of course, Opposer wishes to voice its request for the resetting of discovery at this time.

7. As stated above, Opposer has been actively seeking information from Applicant through its initial written interrogatories and production requests, as well as through its written and oral follow-up requests for supplementation to those answers. As of today's date, Opposer has not received any supplementation to the initial answers, and

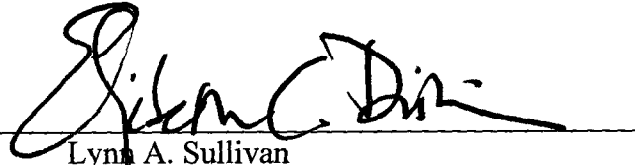
as stated previously, feels compelled to move forward with depositions, though taking them within the current deadline for discovery, appears untenable.

WHEREFORE, Opposer respectfully moves this Board to extend the current discovery cut-off by at minimum ninety days. (Should the Board automatically reset the deadline for more than ninety days, based on the now pending consented motion to amend Opposer's Notice of Opposition, Opposer has no objection to the additional time allotted.) Please note that Opposer requested Applicant's consent to this motion, but Applicant's consent was given conditionally, and Opposer was unwilling to agree to the conditions. Therefore, Opposer brings this motion without Applicant's consent.

Respectfully submitted,

Date:

Sept. 9, 2002



Lynn A. Sullivan
Elizabeth C. Diskin
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza, Suite 4900
Chicago, Illinois 60601
312/616-5600

Attorneys for Opposer

CERTIFICATE OF MAILING

I hereby certify that this **OPPOSER'S MOTION TO EXTENSION OF DISCOVERY CUT OFF** is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, **Box TTAB-NO FEE**, Arlington, Virginia 22202-3513 on September 9, 2002.

Date: September 9, 2002

_____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of **OPPOSER'S
MOTION TO EXTENSION OF DISCOVERY CUT OFF** was sent on this 9th day
of September, 2002, via United States Mail, first class postage prepaid, to:

Duane M. Byers
Nixon & Vanderhye P.C.
1100 North Glebe Road, 8th Floor
Arlington, VA 22202-4714

